

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CRIMINAL NO. 02-00225DAE
Plaintiff,) Honolulu, Hawaii
vs.) August 28, 2007
(01) ANDY S. S. YIP,) 9:37 a.m.
(02) BRENDA M. O. CHUNG,)
Defendants.) FURTHER JURY TRIAL
(TESTIMONY OF
EMERALD LIBURD)

PARTIAL TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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United States District Court
P.O. Box 50131
Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 analysis, was how much?

2 A 582,899.40.

3 Q So your analysis led to a conclusion that there was over a
4 million dollars in unreported income for those 2 years?

5 A That is correct, sir.

6 Q Well, what did you do to get your questions answered?

7 A I spoke with the accountant and I explained to him the
8 analysis that I had prepared and asked him whether or not there
9 were any explanations for these amounts that were deposited
10 into his personal account.

11 Q And what did the accountant tell you?

12 A The accountant, I had to give him a few days to get this
13 information to the taxpayer and inform him of this. And there
14 were documents provided later to account for the amounts.

15 Q Okay. And this accountant is Mr. Lee; is that right?

16 A Yes, it is.

17 Q And I'd like to draw your attention to Exhibits 29 and 30.
18 Do you have those before you, ma'am?

19 A Yes, I do.

20 Q And what are Exhibits 29 and 30?

21 A Exhibits 29 and 30 are the responses I received from the
22 accountant to explain the unexplained amounts. Exhibit
23 Number 29 was information on a particular individual, Eriko
24 Dmitrovsky. And the Exhibit 30 are promissory notes also from
25 that same person.

1 Q From that person or to that person? Who loans who the
2 money, is what I'm getting at.

3 A The loans were loaned from this individual,
4 Mrs. Dmitrovsky, to Mr. Yip.

5 Q Okay.

6 MR. OSBORNE: And we would move 29 and 30 into
7 evidence, Your Honor.

8 MR. CHANG: No objection.

9 MR. LUKE: No objection.

10 THE COURT: Be received.

11 (Government's Exhibits 29 & 30 were received in evidence.)

12 BY MR. OSBORNE:

13 Q 29 is a business card; is that correct?

14 A Yes, it is a business card.

15 MR. OSBORNE: And if we could just show it?

16 BY MR. OSBORNE:

17 Q And that gives you a name, an address and telephone number
18 for someone here in Honolulu; is that right?

19 A Yes, it does.

20 Q And why was that provided?

21 A This was provided when I asked for explanations of the
22 unexplained deposits, this was provided -- this business card
23 along with the -- along with the promissory notes from --

24 Q Ms. --

25 A Mrs. Dmitrovsky.

1 A No.

2 Q And another note dated June the 30th, also to Eriko
3 Dmitrovsky, also \$50,000, also 7 percent with no specific terms
4 of repayment; is that correct?

5 A That is correct.

6 Q And the final note in the package was dated March the
7 31st, 1995, and that one was for 100,000. Again, at 7 percent,
8 and again with no specific repayment terms?

9 A That is correct.

10 Q So you received four notes dated on various dates, for a
11 total of 250,000, if my math is right?

12 A That is correct.

13 Q Was there any explanation as to why there were four notes
14 rather than just one or two or three, why -- why were there
15 four separate notes?

16 A I was never told why there were four separate notes.

17 Q Now, did you contact Ms. Dmitrovsky?

18 A Yes, I did.

19 Q And how did you do that?

20 A Initially I contacted Mrs. Dmitrovsky by telephone.

21 Q And tell us about that conversation. What did the two of
22 you talk about?

23 A I introduced myself to her and I asked her about the loans
24 or loans that she loaned to Mr. Yip. And in that conversation
25 Mrs. Dmitrovsky indicated to me emphatically that she loaned to

1 Mr. Yip once a sum of money. And that was about the extent of
2 the conversation, that she loaned Mr. Yip funds in a large
3 amount once.

4 Q Once?

5 A Yes.

6 Q Did you over the telephone confront her with the fact that
7 you had four separate loans?

8 A No, I did not.

9 Q After that telephone call, what did you do? In regard to
10 Dmitrovsky, I'm sorry.

11 A In regard to -- I got a letter from Mrs. Dmitrovsky.

12 Q All right. And that brings us then to Exhibit 31. Do you
13 have that before you? Do you have Exhibit 31?

14 A Yes, I do.

15 Q And is that the letter you received?

16 A Yes, this is a letter I received from Mrs. Dmitrovsky.

17 Q To explain about the notes?

18 A Yes.

19 MR. OSBORNE: And we would move Exhibit 31 into
20 evidence. (C 44)

21 MR. CHANG: Excuse me a second.

22 (Pause in the proceedings.)

23 MR. CHANG: Is this the one you changed?

24 MR. OSBORNE: Changed the number, it is now -- I'm
25 sorry, I don't have the --

1 Q And I think we were just starting with Exhibit 31 when we
2 took the break. My records show it had been admitted into
3 evidence.

4 And, Ms. Liburd, this is the letter that you received
5 from a Mrs. Dmitrovsky?

6 A Yes, it is.

7 Q Had you solicited this letter or did it just come?

8 A It just came.

9 Q And I notice it says: "Please find the information you
10 need regarding the funds that I loaned to Mr. Andy Yip. Total
11 amount: 350,000 U.S. dollars between 1995 and 1996 numerous
12 times. Each time the amount was different and I don't have any
13 detailed record." A

14 What did you do when you got this letter?

15 A When I got this letter I recalled the conversation that I
16 had with Mrs. Dmitrovsky prior to receiving this letter and
17 found it conflicting to --

18 Q What was the conflict as you perceived it?

19 A Formerly when I spoke with her on the phone when I
20 initially contacted her, she specifically stated that she
21 loaned Mr. Yip an amount once, a big amount which she certainly
22 can give me a record of. And then when I looked at this
23 letter, I noticed that it indicated that she loaned numerous
24 times. So I certainly couldn't -- did not know which one was
25 correct.

6

1 Q And the promissory notes that you had been provided,
2 Exhibit 30, they added up to 250,000; is that correct?

3 A That is correct.

4 Q So, when you noticed these conflicts, what did you do?

5 A I called Mrs. Dmitrovsky and I said to her: I would like
6 to have a meeting with you. Could you kindly come in and meet
7 with me?

8 Q Now, and when did you set that meeting up for?

9 A That meeting was set up for September of 1998.

10 Q Okay. Now, drawing your attention to Exhibit 32 for
11 identification. Did something happen between the Dmitrovsky
12 letter and your meeting with her scheduled for September in
13 regard to the audit you were conducting?

14 A I received in the mail a letter from the accountant
15 Mr. Lee.

16 Q Do you know what the letter you received was in response
17 to? Had you contacted him again or was it from one of your
18 meetings? What had happened, if anything?

19 A I do not recall.

20 Q Okay. This is in fact a letter you received written by
21 Mr. Lee in regard to Mr. Yip?

22 A Yes, it is.

23 MR. OSBORNE: And we would move Exhibit 32 into
24 evidence.

25 MR. CHANG: No objection.

1 on one occasion when she was leaving to go to France she was
2 asked by Mr. Yip to loan her three hundred -- to loan him
3 \$350,000. She said that she did not give the funds to Mr. Yip
4 at that time. However, she went to Smith Barney at the corner
5 of Ala Moana and Bishop, and she withdrew the funds -- actually
6 she wired the funds from Smith Barney to France to a friend
7 that she had there. She then flew to France and at that time
8 she had not given any funds to Mr. -- Mr. Yip. But when she
9 arrived in France, she gave funds to six different friends that
10 were coming to the United States and she gave them funds in
11 foreign currency of francs, but that totaled approximately
12 9,000 U.S. dollars and she gave these funds to these six
13 friends to bring back to the United States to give to Mr. Yip.

14 Q And that only accounts for about, what, \$60,000 -- six
15 times ten. Did you discuss with her the discrepancy in the
16 amount?

17 A Yes, I did.

18 Q And what did you tell her, what did she say to you?

19 A I -- I told Mrs. Dmitrovsky that if she had given
20 \$6,000 -- excuse me, she had given \$9,000 to approximately six
21 friends, that would only total 54,000, and that the reason she
22 was sitting with me is we were trying to account for \$350,000
23 that she said she had loaned to Mr. Yip. At that point in time
24 Mrs. Dmitrovsky said that those friends came back twice. I
25 then informed her that even with that calculation we have not

1 A One, on the far left, was the loan and some deposits were
2 from his business, some deposits were from A. Y., and it was a
3 breakdown of all the deposits into the personal bank accounts.

4 Q Okay. And now there is a column "foreign exchange." What
5 did you understand was there?

6 A Well, when I saw the column "foreign exchange," I looked
7 on the last -- on Page 3 of that column -- of that exhibit, I'm
8 sorry, which is Page 281, I noted at the very bottom of that
9 foreign exchange column that one of the names of the parties
10 that I received phone numbers from -- the phone number from
11 and off of the promissory note that that note was at the bottom
12 of the foreign exchange column, possibly indicating that the
13 amounts from the foreign exchange were funds from that
14 particular party at the bottom of page --

15 Q And that, as you read it, was who?

16 A Andy Chung.

17 Q Now, foreign exchange, those are the HFE deposits; isn't
18 that correct, Honolulu Foreign Exchange checks?

19 A Yes, that is correct.

20 Q And this was the account for Wai Lin Yip at Bank of
21 Hawaii; is that correct?

22 A This is Andy and Wai Lin Yip, yes, correct.

23 Q And Wai Lin you came to know was the wife of the
24 defendant?

25 A That is correct.

1 Q All right. Now let's go on Exhibit 39. And what's that?

2 A Exhibit Number 39 is a continuation of Exhibit 38. What
3 it is, is another bank account. Exhibit 38 has account number
4 9708985. And this is account number 01991. So it is actually
5 a continuation, but it is a breakdown of the bank account of
6 another -- of another bank account into the different
7 categories.

8 Q Okay. And I notice on the first page, I never can
9 remember what you call those things, but those brackets that
10 look like a face that you put by a lot of things, whatever it
11 is that's in the first column, what do you call those?

12 A The parentheses?

13 Q Yeah. Thank you. I noticed that there are parentheses.
14 Did you put that there?

15 A No, I didn't.

16 Q And I notice there are names, Eriko, Andy Chung. Did you
17 put that there?

18 A No, I didn't.

19 Q So that's how it came to you; is that right?

20 A That is correct.

21 Q And that seems to indicate that the source of these
22 foreign exchange checks listed under that column were either
23 from Eriko or Andy Chung?

24 A That's what I insinuated from that.

25 Q Okay. And moving on to 40, is that a continuation of

1 schedules that we have been talking about?

2 A That is, but it is for the year of 1995, though, and not
3 for the year of 1996 as previous -- in the previous exhibit.

4 Q Okay.

5 MR. OSBORNE: And we would move that into evidence.
6 And ask that -- I'm sorry.

7 MR. CHANG: No objection, Your Honor.

8 THE COURT: Okay.

9 MR. LUKE: No objection.

10 THE COURT: Be received.

11 (Government's Exhibit 40 was received in evidence.)

12 MR. OSBORNE: And I'm being told, Your Honor, that
13 even though we've already displayed it, I didn't move 39 into
14 evidence. So we would move it in as well.

15 MR. LUKE: No objection.

16 MR. CHANG: None.

17 THE COURT: All right. Be received.

18 (Government's Exhibit 39 was received in evidence.)

19 BY MR. OSBORNE:

20 Q Now, on 40, again in the foreign exchange column, is there
21 anything that indicated to you this had something to do with
22 loans?

23 MR. OSBORNE: And you can display it.

24 THE WITNESS: In that exhibit for the year of 1995,
25 but it does indicate that that amount in the far -- or from the

11

1 foreign exchange was given by Eriko Dmitrovsky.

2 BY MR. OSBORNE:

3 Q Okay. And what was the amount given by Eriko, if you can
4 read it? My copy is bad, too.

5 A It looks like 31 -- are we talking about Exhibit 40?

6 Q Exhibit 40, yes, ma'am.

7 A \$31,267.

8 Q Okay. Now, did you ever have a conversation at Mr. Lee's
9 office with the defendant, Mr. Yip, concerning these loans?

10 A Yes, I did.

11 Q And how did that take place?

12 A When I was presented with these schedules and I saw these
13 amounts, the foreign exchange amounts, I asked the accountant:
14 What are -- what are these, what are these foreign exchange
15 amounts? Because I have never seen them before. And Mr. Lee,
16 the accountant, told me that he would be happy to allow me to
17 speak with the taxpayer, Mr. Yip.

18 Q And did you?

19 A Yes, I did.

20 Q And how was that accomplished?

21 A He picked up the phone, dialed the phone -- dialed
22 Mr. Yip's phone number.

23 Q And the fellow dialing the phone is Ron Lee, the
24 accountant?

25 A Yes, it is.

1 Q And Mr. Yip took the call?

2 A Yes, he did.

3 Q And you took the phone?

4 A Yes, I did.

5 Q And what happened during the telephone call?

6 A During the telephone conversation I asked Mr. Yip for an
7 explanation of the foreign exchange amounts.

8 Q And what did he say?

9 A Mr. Yip's response was that the foreign exchange amounts
10 were funds that he had received from his friends in foreign
11 currencies. These funds he kept in a safe and when he needed
12 funds, additional funds, he would take funds from that safe,
13 take it to the Honolulu Foreign Exchange and in exchange for
14 the funds, the foreign funds, he would get from the Honolulu
15 Foreign Exchange a check. That check did not have a payee's
16 name on it, that was left blank, but it was given to Mr. Yip.
17 And those amounts were deposited into his bank account. And
18 those were the foreign exchange that I was seeing on those
19 schedules.

20 Q Did he have -- did he say anything to you when he was
21 talking about foreign money as to whether or not it was yen,
22 pounds, dollars, francs, that sort of thing?

23 A No, I -- no, I don't recall that.

24 Q All right. We'll go back to the schedules briefly. What
25 is Exhibit 41?

1 A Exhibit 41. Exhibit 41 is for account -- for one of the
2 bank accounts for the year of 1995. And it is a schedule that
3 breaks down that bank account and all the deposits into
4 different categories.

5 Q Provided by Lee on behalf of Yip?

6 A Yes, it was.

7 MR. OSBORNE: And we would move that into evidence,
8 Your Honor.

9 MR. CHANG: No objection, Your Honor.

10 MR. LUKE: No objection.

11 THE COURT: Be received.

12 (Government's Exhibit 41 was received in evidence.)

13 BY MR. OSBORNE:

14 Q And does this document contain any information about
15 possible loans?

16 A Yes, it does.

17 Q And what -- who is involved in this schedule?

18 A In this schedule, under "foreign exchange" right at the
19 bottom, that name is Eriko Dmitrovsky.

20 Q And how much does this schedule say Ms. Dmitrovsky --
21 Mrs. Dmitrovsky loaned?

22 A In 1995 that amount is \$153,701.

23 Q Okay. Now, finally with the schedules, Exhibit 42.
24 What's this?

25 A This was another set of schedules that I received from the

14

1 accountant in an attempt to explain the unexplained deposits.

2 MR. OSBORNE: Okay. And we would move 42 into
3 evidence.

4 MR. CHANG: No objection, Your Honor.

5 MR. LUKE: No objection.

6 THE COURT: Be received.

7 (Government's Exhibit 42 was received in evidence.)

8 BY MR. OSBORNE:

9 Q Now, this is a schedule for two accounts; is that correct?
10 And we can display it. Actually four accounts, I'm sorry, it's
11 on two pages.

12 MR. OSBORNE: Just display the first page.

13 BY MR. OSBORNE:

14 Q Three pages. Oh, my goodness, lots of pages. One, two,
15 three, four -- five pages. Schedule and five pages; is that
16 correct?

17 A Yes, that is correct.

18 Q And for how many accounts is this schedule?

19 A Well, if you look at Exhibit 42, and that is two accounts
20 for the year of 1995. These are explanations that were given
21 for funds not deposited into the foreign exchange.

22 Q Okay.

23 A On the next page are the same two accounts. However --
24 also for the year of 1995 and it is the -- they are the same
25 accounts. However, these amounts were deposited into the

1 foreign exchange because they mirror the exhibits previous to
2 this amounts in the amounts and the loans were from Eriko
3 Dmitrovsky.

4 Q All right. Now, looking at that first page, I notice at
5 the bottom, towards the bottom of the page there's a check, an
6 X, and a number with some writing after it. What's -- what is
7 this information, how did it get there?

8 A The top information was given to me by the accountant.
9 The three numbers -- amounts below and those numbers are my
10 totaling the amounts above. And put in check -- check marks to
11 indicate which ones I'm referring to above.

12 Q So if it has a number by the amount, that's not
13 substantiated in your opinion?

14 A Yes, it wasn't.

15 Q And the X is also not substantiated?

16 A That is correct.

17 Q And the check is a purported loan from Andy Chung?

18 A That is correct.

19 Q Then there's one of these brackets or parentheses on the
20 second page. And who wrote "loan from Eriko" there in the
21 right-hand column?

22 A That was given to me that way. I do not know who wrote
23 that.

24 Q Okay. So, apparently the entire amount listed here,
25 \$153,701, that's supposed to be a loan from Eriko?

1 A That -- yes.

2 Q And then the third page, we have again at the bottom of
3 the page some notations concerning a loan from Andy Chung --
4 well, a check, X and number again. Whose writing is that?

5 A That is my writing.

6 Q Okay. And it's the same meaning as the first page?

7 A Yes, but it's for the year of 1996.

8 Q Okay. Now, on the next page, it's Bates stamped 289,
9 there are brackets and references to Andy Chung and Eriko. Did
10 you put that there?

11 A No, I -- I did not.

12 Q So this was an attempt to show where various checks had
13 come from; is that what you understood?

14 A That's what I understood it to mean.

15 Q And the final page, the same kind of information relating
16 to Eriko and Andy, but a different account?

17 A That is correct.

18 Q Now, you have talked to us about -- well, you tell me.

19 Who were the four people that Mr. Lee and/or Andy Yip
20 told you they had gotten loans from?

21 A First Eriko Dmitrovsky, Mrs. Dmitrovsky, Ivy Boaz, Andy
22 Chung, and you got me on the fourth one.

23 Q How about James and Shirley?

24 A That is correct.

25 Q Did they at any time tell you they had received a loan